# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Questions presented | 2 |
| Statement | 2 |
| Argument: | |
| Introduction and summary | 11 |
| The convictions violate the Due Process Clause of the Fourteenth Amendment because there was no evidence that appellants disobeyed the temporary restraining order issued against them | 13 |
| Conclusion | 20 |


## CITATIONS


| Cases: | |
|---|---|
| *B & C Truck Leasing, Inc.* v. *I.C.C.*, 283 F. 2d 163 | 19 |
| *Cole* v. *Arkansas*, 333 U.S. 196 | 14 |
| *Cooke* v. *United States*, 267 U.S. 517 | 15 |
| *DeJonge* v. *Oregon*, 299 U.S. 353 | 11, 14 |
| *Edwards* v. *South Carolina*, 372 U.S. 229 | 12 |
| *Gallegos* v. *Nebraska*, 342 U.S. 55 | 14 |
| *Garner* v. *Louisiana*, 368 U.S. 157 | 13, 14, 17 |
| *Gitlow* v. *New York*, 268 U.S. 652 | 11 |
| *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418 | 15 |
| *Green* v. *United States*, 356 U.S. 165 | 15 |
| *In re Green*, 369 U.S. 689 | 12 |
| *Hague* v. *C.I.O.*, 307 U.S. 496 | 11, 12 |
| *Jones* v. *Opelika*, 319 U.S 103 | 12 |
| *Konigsberg* v. *State Bar*, 353 U.S. 252 | 14 |
| *Kunz* v. *New York*, 340 U.S. 290 | 12 |
| *Lanzetta* v. *New Jersey*, 306 U.S. 451 | 18 |
| *Largent* v. *Texas*, 318 U.S. 418 | 12 |
| *Lisenba* v. *California*, 314 U.S. 219 | 19 |
| *Lovell* v. *Griffin*, 303 U.S. 444 | 12, 13 |




707-284—63——1

Cases—Continued Page
*Mauldin* v. *State*, 28 Ala. App. 30, 177 So. 309 ..... 14
*Michaelson* v. *United States*, 266 U.S. 42 ..... 15
*Musser* v. *Utah*, 333 U.S. 95 ..... 18
*Nasif* v. *United States*, 165 F. 2d 119 ..... 19
*Niemotko* v. *Maryland*, 340 U.S. 268 ..... 12
*Russell C. House Transfer & Storage Co., Inc.* v. *United States*, 189 F. 2d 349 ..... 19
*Saia* v. *New York*, 334 U.S. 558 ..... 12
*Schenck* v. *United States*, 249 U.S. 47 ..... 11
*Schneider* v. *State*, 308 U.S. 147 ..... 12
*Schware* v. *Board of Bar Examiners*, 353 U.S. 232 ..... 14
*Smith* v. *Cahoon*, 283 U.S. 553 ..... 13
*Staub* v. *City of Baxley*, 355 U.S. 313 ..... 12, 13
*Taylor* v. *Louisiana*, 370 U.S. 154 ..... 14
*Thomas* v. *Collins*, 323 U.S. 516 ..... 11, 12
*Thompson* v. *Louisville*, 362 U.S. 199 ..... 14, 17
*United States* v. *United Mine Workers*, 330 U.S. 258 ..... 11
*United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103 ..... 14
*Winters* v. *New York*, 333 U.S. 507 ..... 18
*Wright* v. *Georgia*, 373 U.S. 284 ..... 18

Constitution and statutes:
United States Constitution:
First Amendment ..... 12
Fourteenth Amendment ..... 2, 12, 13, 14
General City Code of Fairfield:
Section 3-4 ..... 3
Section 3-5 ..... 3
Section 14-53 ..... 3

Miscellaneous:
Cox, *The Void Order and the Duty To Obey*, 16 U. of Chic. L. Rev. (1948) 86 ..... 12
II High, *A Treatise on the Law of Injunctions*, Sec. 1431a, 1419 (4th ed., 1905) ..... 18, 19

# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 30

EDWARD R. FIELDS ET AL., APPELLANTS

*v.*

CITY OF FAIRFIELD

*ON APPEAL FROM THE SUPREME COURT OF ALABAMA*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

### OPINIONS BELOW

The opinion of the Supreme Court of Alabama (R. 86–90) is reported at 273 Ala. 588, 143 So. 2d. 177. The decree of the Circuit Court of Jefferson County, Alabama (R. 71–73) is not reported.

### JURISDICTION

The judgment of the Supreme Court of Alabama was entered on June 14, 1962 (R. 91), and an application for rehearing was overruled on July 12, 1962 (R. 93). Probable jurisdiction was noted on March 18, 1963 (372 U.S. 940; R. 99) at which time the Solicitor General was invited to file a brief expressing the views of the United States. The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

## QUESTION PRESENTED

Appellants were convicted of contempt of court for violating a state court's *ex parte* restraining order that prohibited them from distributing specified handbills and from holding a public meeting at a particular time and place. The question presented and discussed in this brief is whether their convictions violate the due process clause of the Fourteenth Amendment because they are wholly unsupported by evidence proving disobedience of the restraining order.

## STATEMENT

On October 11, 1961, the City of Fairfield, Alabama, filed a complaint in the Circuit Court of Jefferson County, Bessemer Division, against Dr. Edward R. Fields and the National States Rights Party (R. 1–3). The complaint alleged that the defendants had "called a public meeting at 5329 Valley Road, Fairfield, Alabama, for Wednesday, October 11, 1961," and had "announced said meeting by distributing hand bills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield * * *" (R. 2).[1] It was

[1] The handbills which appellants had distributed read (R. 3–4):

WHITE WORKERS MEETING
*NIGGERS ARE TAKING OVER UNIONS!
*NIGGERS WANT OUR PARKS AND POOLS!
*NIGGERS DEMAND MIXED SCHOOLS!
Communists in NAACP and in WASHINGTON say Whites HAVE NO RIGHTS!
The Nigger gets everything he DEMANDS!
WHITE SUPREMACY CAN be saved
Whites CAN STOP this second Reconstruction!

charged that the handbills had been distributed upon the streets of Fairfield, and left in automobiles, in violation of Sections 3–4 [2] and 3–5 [3] of the General City Code of Fairfield, and that the defendants planned to hold the meeting without a permit, as required by section 14–53 of the City Code [4] (R. 2; Pet. 3–4). Finally, the complaint alleged that the "purpose of said meeting as manifested by the attached hand bill is to create tension, ill will, disturbances, and disor-

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HEAR IMPORTANT SPEAKERS FROM 4 STATES
TIME—8 P.M. DATE—WED. OCT. 11
PLACE—5329 VALLEY ROAD
IN DOWNTOWN FAIRFIELD, ALABAMA
Above the Car Wash
THUNDERBOLT Mobile Unit will Be Parked Out Front
Sponsored by National States Rights Party
Box 733, Birmingham, Alabama
PUBLIC INVITED
COME AND BRING YOUR FRIENDS!

[2] Section 3–4 provides:

Handbills, etc.—Distribution on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper handbills, circulars, dodgers or other advertising matter. [Ord. No. 354, § 4 (1957).]

[3] Section 3–5 provides:

Same—Placing or throwing in automobiles.

It shall be unlawful for any person to distribute in the city any handbill or other similar form of advertising by throwing or placing the same in any automobile or other vehicle within the city. [Ord. No. 354, § 5 (1957).]

[4] Section 14–53 provides:

Public meetings; permit required.

It shall be unlawful for any person or persons to hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor to do so. [Ord. No. 184, § 4, 11–9–32.]

derly conduct between the races in the City of Fairfield, Alabama" and that the meeting "is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield, Alabama * * * [and] will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and the inhabitants thereof" (R. 2).

Pursuant to the prayer of the complaint, the court, on the same day, issued an *ex parte* temporary restraining order, enjoining the defendants from (R. 5–6):

> * * * holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield * * * on October 10, 1961, until further orders from this Court * * *.

A final hearing on the application for permanent injunction was set for November 17, 1961 (R. 4–5).[5]

Dr. Fields and Robert E. Lyons[6] were charged with contempt for violating the Circuit Court's temporary restraining order (R. 8). On October 12, 1961, a hearing was held at which the following evidence was adduced:

On the afternoon of Tuesday, October 10 (the day before the injunction was issued), Mr. Smithson,

[5] Fields was served with the injunction at 11:50 A.M. on October 11 (R. 25).

[6] Lyons is a member of the National States Rights Party and its youth organizer (R. 58).

Mayor of Fairfield, learned that handbills announcing the October 11 meeting had been distributed in Fairfield, and that no application had been made to distribute the handbills or hold the meeting (R. 43). The Mayor thereupon sent a notice to Fields, delivered by a Fairfield officer, in which Fields was advised that "he had already violated[7] * * * one of the ordinances of the City of Fairfield" and that the city also had an ordinance in regard to public meetings (R. 43). That evening, the Mayor had two telephone conversations with Fields (R. 37–44), during which Fields insisted that the meeting would be held and the Mayor asserted "you won't have the meeting in Fairfield" (R. 38).[8] However, on October 11, the Mayor agreed to see Fields at 2 p.m. that day, but, after Fields was served with the injunction (just before noon), he decided not to meet the Mayor be-

[7] The Mayor had no knowledge of whether additional handbills were distributed after Fields was served with the injunction (R. 44).

[8] Fields testified that the Mayor had said that he would not issue a permit "for any such organization to hold such a meeting in Fairfield" (R. 53). However, the National States Rights Party had held a meeting in Fairfield on the night of October 10, 1961 (R. 47). That meeting was peaceful, and no trouble occurred (R. 47). Fields also testified that the purpose of the October 11, 1961, meeting was to "inform the people on a number of subjects", including the prosecution of the Anniston bus burners (R. 52), to acquaint the audience with the aim of the National States Rights Party, and to recruit new members after the meeting (R. 53). Fields explained that the party is "an organization that stands for law and order" and that it intended to "sponsor candidates for public office in future elections in Alabama" (R. 52–53).

cause "no further good could be made out of the meeting with the Mayor * * *" (R. 55).[9]

Dr. Fields' uncontradicted testimony was that after he was served with the injunction the meeting in Fairfield was called off and transferred to the Lipscomb City Park (R. 47–48). He explained that "Mayor Olney [of Lipscomb] was contacted and he volunteered both the city hall for the meeting or the city park" (R. 49). Fields emphasized that he "didn't have any intention whatever of violating" the injunction (R. 51); "* * * that is why we got the other hall, the other park" (R. 52).[10] When asked "* * * You did not actually do one single act in violation of this ordinance, did you?", he replied, "We tried to do everything to avoid violating the ordinance, the injunction" (R. 52). Distribution of the pamphlet announcing the meeting scheduled for the evening ceased after the restraining order was served (R. 54).

About 1:30 P.M., Dr. Fields and Mr. Lyons went to the place where the meeting had originally been scheduled in order to pick up a caretaker they had left at the hall and "to take [their] literature out of the hall and carry it to the new meeting place" (R. 49–50). But the building was padlocked, a copy of the injunc-

[9] Fields testified that, instead of meeting with the Mayor, he "spent the rest of the afternoon trying to arrange for another hall" (R. 55).

[10] Mr. Short, Chairman of the Jefferson County Citizens' Council, testified that he went to Lipscomb for the meeting and expected to see Fields there (R. 60–61). He explained (R. 62): "* * * they told me there had been an injunction was the reason they moved it to Lipscomb."

tion was affixed to the door, and they were refused entry by a police officer (R. 33–34; 50).

In the evening, about 7:30 P.M., Dr. Fields, accompanied by his wife and Mr. Lyons, went to the neighborhood of the Fairfield meeting site (R. 49). Across the street from the hall where the meeting was to have been held, a crowd had gathered (R. 54).[11]

According to Dr. Fields, he came to the scene "for the sole purpose of directing anyone who responded to the handbill before the injunction was issued to go to the Lipscomb City Park" (R. 49).[12] He stated that he so informed "ten or twelve people" (R. 49–51), distributed several copies of the Party newspaper, the "Thunderbolt" (R. 54–55),[13] and was arrested

[11] Elsewhere, Fields stated that "[a]pproximately not more than twelve people" had gathered and that "I saw twelve people" (R. 55, 57). However, Police Chief Morris testified that a "fairly good crowd" had congregated (R. 26).

[12] Mrs. Fields testified that she and her husband went to the site of the meeting "to tell the people that might come there that there wasn't going to be a meeting" (R. 63). She stated that she intended to attend a meeting in Lipscomb and that after the injunction was served there were not "any plans whatever to hold the meeting in Fairfield" (R. 63; 64). Mrs. Fields also testified that after the injunction was served no copies of the leaflet announcing the meeting were distributed (R. 64).

[13] A copy of the issue in question was introduced at the contempt hearing (R. 20) and is included in the record before this Court (between pages 20 and 21). It contains no announcement of a meeting in Fairfield. Defendants' counsel so advised the court (R. 25). The issue of the "Thunderbolt" contained anti-Negro, anti-Jewish, and anti-federal-government articles. For example, the headline on page 1, referring to an article about the burning of a freedom-rider bus at Anniston, Alabama, said: "'Freedom Riders' Burn Bus While Bobby Kennedy Blames 9 Innocent White Alabamians." An

"almost immediately" (R. 49). Only then did he cross the street to the sidewalk adjacent to the scheduled meeting hall. This was at the direction of the arresting officers, who placed him in a patrol car (R. 50–51).[14]

Fields' account of what occurred on the evening of October 11 was corroborated in every respect by the testimony of Fairfield police officers. Officer Pope testified that when he arrived at the scheduled meeting place, he saw Fields "across the street * * * telling the people that the meeting was going to be at Lipscomb City Hall instead of there at Fairfield" (R. 18), that the meeting scheduled for Fairfield "had been called off" (R. 19) and that they should "go on over to Lipscomb" (R. 20). Pope stated that there was no disturbance and that conditions were peaceful (R. 19). When Pope was asked whether Fields was "attempting to hold any kind of a meeting there," he replied: "No, sir. He was just saying the meeting would be held in Midfield or Lipscomb—at Lipscomb City Hall" (R. 20). Officer Pope testified that he did not see Fields distribute any pamphlet other than the "Thunderbolt" (R. 18, 20). Officer Misso, who arrested Lyons on Mayor Smithson's orders, also testified that "[t]here was no meeting held" and that the

editorial on page 3, referring to a story carried on the same page about an allegedly Jewish Judge who imposed a lenient sentence upon a Negro who molested a white girl, includes such phrases as "This filthy kike, Judge Gold"; "The satanic Jew;" "nigger rapes of innocent little White girls"; "the negro animals."

[14] This was corroborated by Police Officer Wood (R. 31–32).

only leaflet he saw at the time was the "Thunderbolt" (R. 22, 24).

When Chief of Police Morris arrived on the scene, Fields and Lyons were across the street from where the meeting was scheduled (R. 26–27). Morris testified that when Fields was brought over to him, he said, "[d]idn't I tell you to stay out of Fairfield," and that Fields replied, "[a]ll I'm doing is directing them over to Lipscomb" (R. 26). Fields and Lyons explained to Morris that "they were over there [across the street from where the meeting was scheduled] to ask the people to go on to Lipscomb and they were trying to get the crowd over to Lipscomb" (R. 28). Chief Morris did not see any leaflet passed out by Fields or Lyons other than the "Thunderbolt" (R. 28).[15] There was no contrary evidence.

The trial judge found the appellants guilty of contempt and sentenced each of them to five days in jail and a fine of fifty dollars (R. 8). While, in the opinion of the trial judge, the ordinances were "a legal exercise of the police power of the municipality" (R. 72), he held that the appellants could not "collaterally attack the constitutionality of [the] ordinance in a contempt proceeding without first purging yourself of that contempt, if there is any there" (R.

[15] Officer Wood testified that he and another policeman "started looking through the cars [which were at or near the meeting place] for anything we could find, pamphlets or magazines and what have you, and we ran across a white '59 Ford with these Thunderbolts in it. There were at least a hundred or more" (R. 30). Wood also found three shotgun shells and a rifle slug in this car (R. 30-31). The car belonged to Fields (R. 34).

71–72). On the question of evidence of violation, the judge ruled (R. 72):

> While there is no evidence that the pamphlet was redistributed, the writ of injunction says "distribute further handbills, announcing such meeting, as were distributed in the city of Fairfield."
>
> I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed.

The convictions were affirmed by the Supreme Court of Alabama, which rendered its opinion (R. 86–90) on June 14, 1962. The Supreme Court said (R. 88):

> Fields and Lyons were arrested that night where a crowd had gathered across the street from the advertised place of meeting. Fields was making announcements to the crowd and both he and Lyons were distributing copies of "The Thunderbolt" * * *.

Addressing itself to a defense contention "that the evidence shows they did not violate the terms of the injunction" the court held that (R. 88):

> There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law; but if the court below misapplies the law to the facts as found by it or there is no evidence to support

> the finding, a question of law is presented to be reviewed upon the petition for certiorari. * * *

On the question of the constitutionality of the ordinance requiring a permit for the conduct of a public meeting,[16] the court remarked, "[w]e cannot say that it is unconstitutional on its face" (R. 88), but held that, in any event, the validity of the ordinance could not be tested by disobedience of the restraining order. It concluded that "petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings" (R. 90).

## ARGUMENT

### INTRODUCTION AND SUMMARY

On its face, the opinion below raises a question of broad importance—whether the rule that one may not test by disobedience the validity of an injunction issued by a court of competent jurisdiction—affirmed by this Court in *United States* v. *United Mine Workers*, 330 U.S. 258—applies in the context of the peaceful exercise of First Amendment rights. On the one side, much of what was said in *United Mine Workers* would seem to support application of that rule here. On the other hand, the plain unconstitutionality of the *ex parte* injunction issued in this case,[17] premised

[16] The court appears to have assumed that only the meeting ordinance, and not the handbill ordinance as well was involved (R. 87, 88).

[17] See *Schenck* v. *United States*, 249 U.S. 47; *Gitlow* v. *New York*, 268 U.S. 652; *DeJonge* v. *Oregon*, 299 U.S. 353; *Hague* v. *C.I.O.*, 307 U.S. 496; *Thomas* v. *Collins*, 323 U.S. 516. The fear that spectators might create disorder could not justify

on unconstitutional local ordinances,[18] and the obvious effect of the court order as a prior restraint on constitutionally protected rights of free speech and assembly, argue for a different result. The Court itself has recognized exceptions to the rule of "obey now; challenge later." See *Thomas* v. *Collins*, 323 U.S. 516; *In re Green*, 369 U.S. 689. See, also, Cox, *The Void Order and the Duty to Obey*, 16 U. of Chic. L. Rev. 86 (1948).[19] Examination of the record in this case

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the restraint imposed on freedom of speech and assembly. *Edwards* v. *South Carolina*, 372 U.S. 229.

[18] Section 3–4 of the Fairfield City Code, cited in the complaint, flatly prohibits the distribution "on any of the streets, avenues, alleys, parks or any vacant property within the city," of "any * * * handbills, circulars, dodgers or other advertising matter." An ordinance of such unlimited scope is unconstitutional on its face under the First and Fourteenth Amendments. *E.g.*, *Lovell* v. *Griffin*, 303 U.S. 444; *Hague* v. *C.I.O.*, 307 U.S. 496; *Schneider* v. *State*, 308 U.S. 147.

The meeting ordinance is likewise plainly invalid on its face. Section 14–53 of the City Code makes it unlawful for any person or persons to "hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor * * *." There are no statutory standards by which the mayor is guided in the exercise of the power; nor have we been able to find any Alabama decisions construing this or similar ordinances or statutes. Thus, the ordinance must be taken as written and, as such, it is clearly unconstitutional. *Hague* v. *C.I.O.*, 307 U.S. 496; *Niemotko* v. *Maryland*, 340 U.S. 268, 271; *Kunz* v. *New York*, 340 U.S. 290; *cf. Staub* v. *City of Baxley*, 355 U.S. 313; *Saia* v. *New York*, 334 U.S. 558; *Largent* v. *Texas*, 318 U.S. 418, 422; *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion of Chief Justice Stone in 316 U.S. 584, 600–602. The Fairfield ordinance is particularly objectionable in that it apparently prohibits meetings without a permit on private premises as well as in a public place.

[19] It is, of course, well settled that failure to apply for a permit under a licensing statute does not bar a subsequent

makes it clear, however, that there is actually no occasion to define the limits of the *United Mine Workers* doctrine. Disposition here, we believe, may properly rest on what is plainly a narrower and preliminary ground.

Indeed, the present convictions are vitiated by the most basic flaw of all—absence of any evidence that the defendants violated the injunction. Since, as we show, the lack of evidence of contempt is so glaring as to be beyond dispute, the inquiry may stop there. Any further discussion of the constitutional validity of the injunctive order, or of appellants' right to challenge it under the circumstances, seems unnecessary. *Cf. Garner* v. *Louisiana*, 368 U.S. 157, 163. We rest on the fact that the record contains no evidence which would permit a finding of contempt.

THE CONVICTIONS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THERE WAS NO EVIDENCE THAT APPELLANTS DISOBEYED THE TEMPORARY RESTRAINING ORDER ISSUED AGAINST THEM

The governing principle is plain: "Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his

attack on its constitutionality. *Smith* v. *Cahoon*, 283 U.S. 553; *Lovell* v. *Griffin*, 303 U.S. 444; *Staub* v. *City of Baxley*, 355 U.S. 313. By a parity of reasoning, it may be argued that one should not be compelled to apply for dissolution of a plainly invalid judicial decree in order to preserve the question of its constitutionality upon conviction for disobeying it.

guilt." *Thompson v. Louisville*, 362 U.S. 199, 206.[20] See, also, *Garner v. Louisiana*, 368 U.S. 157; *Taylor v. Louisiana*, 370 U.S. 154. To be sure, "the state's ultimate conclusion on guilt is examined from the due process standpoint in the light of facts undisputed by the state," *Gallegos v. Nebraska*, 342 U.S. 55, 61, and the constitutional claim "does not turn on a question of sufficiency of evidence." *Garner v. Louisiana, supra*, at 163. The inquiry is, rather, whether "the convictions * * * are so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment."[21] *Ibid.* Cf. *Konigsberg v. State Bar*, 353 U.S. 252; *Schware v. Board of Bar Examiners*, 353 U.S. 232. Judged by this standard, it

[20] The Court quoted from *DeJonge* v. *Oregon*, 299 U.S. 353, 362. See also *Cole* v. *Arkansas*, 333 U.S. 196, 201 ("It is as much a violation of due process to send an accused to prison following conviction of a charge on which he is never tried as it would be to convict him upon a charge that was never made"), and, *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106 ("Deportation * * * on charges unsupported by any evidence is a denial of due process * * *").

[21] The principle of the *Thompson* and *Garner* cases has been applied by Alabama Courts. In *Mauldin* v. *State*, 28 Ala. App. 30, 177 So. 309 (1937), the defendant was tried and convicted for embezzlement of eleven hogs. On appeal, the Court of Appeals of Alabama noted (28 Ala. App. at 31): "* * * we have the anomalous situation of a defendant being convicted of a crime charged against him without any evidence to sustain it." The defendant's conviction was reversed and the court said (28 Ala. App. at 32): "To permit this conviction to stand on the record as it appears before us would be to deny this defendant the right of due process of law, guaranteed to him by the Constitution of the United States (Amendment 14) and by the Constitution of this State (section 6)."

seems to us plain that the present convictions cannot stand.[22]

1. Appellants were convicted of contempt for violating a narrowly drawn, specifically circumscribed restraining order. They were enjoined from: (1) "holding a public meeting at 8 P.M. on Wednesday, October 4, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced" and (2) "distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961 * * *." There is no evidence in the record that appellants engaged in either of these activities.

*a.* The undisputed evidence (most of which was provided by the City's own witnesses) shows that Fields and Lyons appeared across the street from the place where the meeting had been scheduled and informed the persons who had gathered that the announced meeting would not be held in Fairfield but in the nearby

[22] We believe that it is clear that the *Thompson* rule is equally applicable to criminal contempt proceedings as to ordinary criminal cases. In both situations, a man's liberty is at stake. Except for the right to trial by jury, a defendant in a criminal contempt proceeding receives the full protection of due process. *Green* v. *United States*, 356 U.S. 165. Thus, he is presumed to be innocent, his guilt must be proved beyond a reasonable doubt, and he cannot be compelled to testify against himself. *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444; *Michaelson* v. *United States*, 266 U.S. 42, 66. He receives notice of and has a reasonable opportunity to meet the charges against him, and has the right to counsel and the right to present his own witnesses and or to cross-examine others, *Cooke* v. *United States*, 267 U.S. 517, 537. There is no reason why he should be deprived of the constitutional rule recognized in *Thompson*.

town of Lipscomb. They suggested that the people congregated there should go to Lipscomb for that purpose.

Thus, not only did Fields and Lyons not hold a public meeting; they were not even at the place where they were enjoined from appearing, *i.e.*, 5329 Valley Road. They were across the street and were only brought to the meeting place after they had been arrested. And certainly appellants' conduct in informing people that the scheduled meeting would *not* be held at the time and place announced, but would be held in another town, does not fall within the language restraining appellants from "holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced * * *."

*b.* Nor did Fields and Lyons distribute any handbills announcing a meeting. The restraining order is very precise as to the type of handbills proscribed. All that is covered are "handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961 * * *." There is no evidence that, after the restraining order was served, Fields or Lyons distributed any handbills of the type distributed on October 10, 1961. Fields merely passed out copies of the "Thunderbolt", a publication which did not mention that any meeting was to be held that night and which was not included within the terms of the injunction. It is a newspaper carrying stories and editorials reflecting a racist viewpoint. The injunction said nothing about distributing newspapers or propaganda. Indeed, it did not even enjoin distribution of "handbills" as such (if the

"Thunderbolt" could conceivably be construed to be a handbill), but only (1) "handbills *announcing such meeting*" and (2) handbills "such as were *distributed* * * * on October 10, 1961" (emphasis supplied). In short, to fall within the terms of the order, the "handbill" would have to announce a meeting *and* be similar to the handbills used the day before. The "Thunderbolt" does not qualify.

2. The trial judge, considering the "tone and content" of the "Thunderbolt", found that the conduct of appellants "was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed" (R. 72). The court's findings are not a substitute for evidence,[23] and, as already indicated, there simply is no evidence in the record to support the court's conclusion. Moreover, even if the court's purely subjective view were to be accepted *arguendo,* it still would not cure the defect. The court only found that appellants violated the injunction by "bring[ing] home the fact that the meeting was going to be held." But this erroneously assumes that the holding of *any* meeting, or an announcement of *any* meeting, would be contemptuous, when, in fact, the injunction ran only against holding a *specific* meeting and announc-

[23] *Cf.* Mr. Justice Frankfurter, concurring in *Garner* v. *Louisiana*, 368 U.S. 157, 175: "A judge's private knowledge, or even 'knowledge by notoriety,' to use Dean Wigmore's phrase, IX Evidence, § 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. *Thompson* v. *City of Louisville*, 362 U.S. 199."

ing such a *specific* meeting. Holding a meeting across the street from the prohibited site might, perhaps, be viewed as improper circumvention of the injunction. But the same can hardly be said of the proposal to adjourn the meeting to another municipality, where the moving parties in the suit had no jurisdiction and the ordinances supporting the restraining order had no force.[24]

The trial judge's finding can only rest on an impermissibly broad reading of his injunction as banning any meeting anywhere, or as prohibiting any distribution of Party literature. We cannot ascribe such a patently absurd "interpretation" of the order to the Alabama Supreme Court, assuming it is free to "construe" local judicial decrees in the same way that it may construe State law. If we did, the contempt convictions would fall because the injunction, so read in the face of the narrowly drawn text, would plainly fail to give adequate notice. See *Lanzetta* v. *New Jersey*, 306 U.S. 451; *Musser* v. *Utah*, 333 U.S. 95; *Winters* v. *New York*, 333 U.S. 507; *Wright* v. *Georgia*, 373 U.S. 284.[25]

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[24] The record is clear that the City of Fairfield, on whose motion the temporary restraining order was issued, is a separately incorporated municipality, wholly distinct from the City of Lipscomb, whose Mayor invited appellants to use the park for the meeting, and that the Fairfield ordinances supporting the injunction are purely local in scope (see R. 1–2, 17, 39, 40–41, 43, 46, 49, 60, 63). A reference to any atlas will show that the two towns are some distance apart.

[25] The degree of certainty of an injunction is a factor to be considered in a contempt proceeding. See II High, *A Treatise on the Law of Injunctions*, Sec. 1431a (4th ed., 1905): "A decree for an injunction which is so indefinite and uncertain as to be absolutely void can not be made the basis for contempt proceedings, and a de-

The fact is that there is absolutely no evidence that Fields or Lyons violated, or even intended to evade, the court's order. Indeed, all of the evidence is to the contrary. Fields and his wife testified they went to the meeting place to inform people that the meeting would not be held in Fairfield but that a meeting place in Lipscomb had been arranged so as not to violate the court's order.[26] The testimony of police officers fully substantiates Field's claim that all he did was to notify people that the scheduled meeting would not be held in Fairfield but in Lipscomb. The trial judge's conclusion that the subjective intent of the appellants was to evade the order is refuted by the objective conduct of the appellants and the testimony of all the witnesses. This is certainly a case in which the determination of the trier of fact cannot be accepted. As this court said in *Lisenba* v. *California*, 314 U.S. 219, 238: "* * * we accept the determination of the trier of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process."

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fendant against whom such a decree purports to run can not be held guilty of contempt of court in disregarding it." High also states (*id.* at sec. 1459): "* * * the injunction should always be plain and specific, since a defendant can not be entrapped into a contempt of court by vague and general orders * * *."

It is equally settled that for purposes of contempt an injunction must be narrowly construed. See *Nasif* v. *United States*, 165 F. 2d 119 (C.A. 5); *B & C Truck Leasing, Inc.* v. *I.C.C.*, 283 F. 2d 163 (C.A. 10); *Russell C. House Transfer & Storage Co., Inc.*, v. *United States*, 189 F. 2d 349 (C.A. 5); II High, *A Treatise on the Law of Injunctions*, sec. 1419 (4th ed., 1905).

[26] One witness testified that he went to Lipscomb for the meeting and expected to see Felds there. See note 10, *supra*.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of Alabama should be reversed.

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